



DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. FAA-2007-27602; Amdt. No. 91-339C]

RIN 2120-AL78

Prohibition Against Certain Flights in the Territory and Airspace of Somalia

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This action amends and extends the prohibition against certain flight operations in the territory and airspace of Somalia at altitudes below Flight Level 260 (FL260) by all: U.S. air carriers; U.S. commercial operators; persons exercising the privileges of an airman certificate issued by the FAA, except when such persons are operating U.S.-registered aircraft for a foreign air carrier; and operators of U.S.-registered civil aircraft, except when the operator of such aircraft is a foreign air carrier. The FAA is amending the flight prohibition to permit overwater operations in the territory and airspace of Somalia at altitudes below FL260 to the extent necessary for climb-outs from, and descents into, Djibouti Ambouli International Airport (HDAM) in the Addis Ababa Flight Information Region (FIR) (HAAA), subject to the approval of, and in accordance with the conditions established by, the appropriate authorities of Djibouti and consistent with air traffic control instructions. Operators climbing out of or descending into Djibouti Ambouli International Airport (HDAM) must remain overwater while operating in the territorial airspace of Somalia at altitudes below FL260 and must operate either on a published instrument procedure or under the direction of air traffic control. The FAA determined the risk to the safety of such operations is low. However, due to increasing safety-of-flight risks to U.S. civil aviation in the rest of the territory and airspace of Somalia at altitudes below FL260 from extremist and militant activity, the FAA also extends the expiration date of this rule from January

7, 2023, until January 7, 2027. The FAA also republishes the approval process and exemption information for this Special Federal Aviation Regulation (SFAR), consistent with other recently published flight prohibition SFARs.

DATES: This final rule is effective on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Bill Petrak, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW, Washington, D.C. 20591; telephone (202) 267-8166; email bill.petrak@faa.gov.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

This action amends and extends SFAR No. 107, title 14 Code of Federal Regulations (CFR) 91.1613, which prohibits certain flight operations in the territory and airspace of Somalia at altitudes below FL260 by all: U.S. air carriers; U.S. commercial operators; persons exercising the privileges of an airman certificate issued by the FAA, except when such persons are operating U.S.-registered aircraft for a foreign air carrier; and operators of U.S.-registered civil aircraft, except when the operator of such aircraft is a foreign air carrier. Specifically, the FAA is amending the flight prohibition to permit overwater operations in the territory and airspace of Somalia at altitudes below FL260 necessary for climb-outs from, or descents into, Djibouti Ambouli International Airport (HDAM) in the Addis Ababa FIR (HAAA). These operations are subject to the approval of the appropriate authorities of Djibouti and must be conducted in accordance with the conditions established by those authorities and consistent with air traffic control instructions. Operators climbing out of or descending into Djibouti Ambouli International Airport (HDAM) must remain overwater while operating in the territory and airspace of Somalia at altitudes below FL260 and must be either on a published instrument procedure or under the direction of air traffic control. Because weapons systems to which extremist and/or militant

groups active in Somalia likely have access have minimal ranges from the coastline, and aircraft using these approaches and departures would only briefly be present in the territory and airspace of Somalia at altitudes below FL260, the FAA determined such operations present a low risk.

However, the FAA has determined increasing safety-of-flight risks exist for U.S. civil aviation operations in the rest of the territory and airspace of Somalia at altitudes below FL260 from extremist and militant activity, as described in the Discussion of the Final Rule section of this preamble. For this reason, the FAA extends the expiration date of this rule from January 7, 2023, until January 7, 2027. Consistent with other recently published flight prohibition SFARs, this action also republishes the approval process and exemption information for this flight prohibition SFAR.

II. Authority and Good Cause

A. Authority

The FAA is responsible for the safety of flight in the U.S. and for the safety of U.S. civil operators, U.S.-registered civil aircraft, and U.S.-certificated airmen throughout the world. Sections 106(f) and (g) of title 49, U.S. Code (U.S.C.), subtitle I, establish the FAA Administrator's authority to issue rules on aviation safety. Subtitle VII of title 49, Aviation Programs, describes in more detail the scope of the agency's authority. Section 40101(d)(1) provides that the Administrator shall consider in the public interest, among other matters, assigning, maintaining, and enhancing safety and security as the highest priorities in air commerce. Section 40105(b)(1)(A) requires the Administrator to exercise this authority consistently with the obligations of the U.S. Government under international agreements.

The FAA is promulgating this rule under the authority described in 49 U.S.C. 44701, General requirements. Under that section, the FAA is charged broadly with promoting safe flight of civil aircraft in air commerce by prescribing, among other things, regulations and minimum

standards for practices, methods, and procedures that the Administrator finds necessary for safety in air commerce and national security.

This regulation is within the scope of the FAA's authority because it continues to prohibit the persons described in paragraph (a) of SFAR No. 107, § 91.1613, from conducting flight operations in the territory and airspace of Somalia at altitudes below FL260 due to the increasing hazards to the safety of U.S. civil flight operations, as described in the preamble to this final rule.

B. Good Cause for Immediate Adoption

Section 553(b)(B) of title 5, U.S. Code, authorizes agencies to dispense with notice and comment procedures for rules when the agency for "good cause" finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Also, section 553(d) permits agencies, upon a finding of good cause, to issue rules with an effective date less than 30 days from the date of publication. In this instance, the FAA finds good cause to forgo notice and comment and the delayed effective date because they would be impracticable and contrary to the public interest.

The risk environment for U.S. civil aviation in airspace managed by other countries with respect to safety of flight is fluid in circumstances involving weapons capable of targeting or otherwise negatively affecting U.S. civil aviation, as well as other hazards to U.S. civil aviation associated with fighting, extremist and militant activity, or periods of heightened tensions. This fluidity and the need for the FAA to rely upon classified information and controlled unclassified information not authorized for public release in assessing these risks make providing notice and opportunity to comment impracticable. The potential for rapid changes in the risks to U.S. civil aviation significantly limits how far in advance of a new or amended flight prohibition the FAA can usefully assess the risk environment. Furthermore, to the extent these rules and any amendments are based upon classified information or controlled unclassified information not authorized for public release, the FAA cannot share such information with the general public. As a result, engaging in notice and comment would be impracticable.

Additionally, it is in the public interest for the FAA's flight prohibitions, and any amendments thereto, to reflect the agency's current understanding of the risk environment for U.S. civil aviation and set appropriate boundaries for the flight prohibition to minimize such risks. This allows the FAA to protect the safety of U.S. operators' aircraft and the lives of their passengers and crews without over-restricting or under-restricting U.S. operators' routing options. The delay that would be occasioned by providing an opportunity to comment on this action would significantly increase the risk that the resulting final action would not accurately reflect the current risks to U.S. civil aviation associated with the situation and thus would not establish boundaries for the flight prohibition commensurate with those risks.

While the FAA sought and responded to public comments, the boundaries of the area in which unacceptable risks to the safety of U.S. civil aviation existed might change due to: evolving military or political circumstances; extremist and militant group activity; the introduction, removal, or repositioning of more advanced anti-aircraft weapons systems; or other factors. As a result, if the situation improved while the FAA sought and responded to public comments, the rule the FAA finalized might be over-restrictive, unnecessarily limiting U.S. operators' routing options and potentially causing them to incur unnecessary additional fuel and operations-related costs, as well as potentially causing passengers to incur unnecessarily some costs attributed to their time. Conversely, if the situation deteriorated while the FAA sought and responded to public comments, the rule the FAA finalized might be under-restrictive, allowing U.S. civil aviation to continue operating in areas where unacceptable risks to their safety had developed. Such an outcome would endanger the safety of these aircraft, as well as their passengers and crews, exposing them to unacceptable risks of death, injury, and property damage that could occur if a U.S. operator's aircraft were shot down (or otherwise damaged) while operating in the territory and airspace of Somalia at altitudes below FL260.

For the reasons previously described, engaging in notice and comment for this rule would be impracticable and contrary to the public interest. Similarly, the potential safety impacts and

the need for prompt action on up to date information that is not public would make delaying the effective date impracticable and contrary to the public interest. Accordingly, the FAA finds good cause exists to forgo notice and comment and any delay in the effective date for this rule.

III. Background

When the FAA last extended the rule prohibiting certain U.S. civil flight operations in the territory and airspace of Somalia at altitudes below FL260 in 2019,¹ it assessed that the situation in the territory and airspace of Somalia at altitudes below FL260 remained hazardous for U.S. civil aviation operations due to the poor security environment and fragile governance structure in Somalia, as well as the threat posed by al-Shabaab, an al-Qa'ida-aligned extremist group, and other extremists/militants. Al-Shabaab had demonstrated an intent and capabilities to target civil aviation operations in the territory and airspace of Somalia at altitudes below FL260 through a variety of means, including the use of an insider to smuggle a concealed improvised explosive device (IED) onto a civil aircraft, use of anti-aircraft-capable weapons, and direct and indirect attacks on Somali airports. Al-Shabaab had frequently targeted Aden Adde International Airport (HCMM) with attacks using indirect fire, small-arms fire, and vehicle-borne IEDs.

In addition, al-Shabaab also frequently conducted vehicle-borne IED attacks targeting Western interests and public venues in Mogadishu, including detonating vehicle-borne IEDs near malls (February 2019), hotels (November 2018), and near a security checkpoint close to Aden Adde International Airport (HCMM) (June 2019). Al-Shabaab was also assessed to have access to anti-aircraft-capable weapons presenting a risk to U.S. civil aviation operations at altitudes below FL260. Furthermore, the Islamic State of Iraq and ash-Sham (ISIS) had a cell trying to gain influence in Somalia, which presented another extremist threat to Western interests,

¹ *Extension of the Prohibition Against Certain Flights in the Territory and Airspace of Somalia*, 84 FR 67665, December 11, 2019.

including civil aviation. The FAA was concerned ISIS elements in Somalia might have access to anti-aircraft-capable weapons.

In February 2019, the African Union Mission in Somalia (AMISOM) began to draw down its forces, as its mandate was set to expire in 2020, and began transferring security responsibilities back to Somalia. During the AMISOM drawdown, the FAA assessed that al-Shabaab might attempt to exploit vulnerabilities in Somali security and increase attacks on remaining AMISOM bases and Western interests. For these reasons, the FAA was concerned the risk to U.S. civil aviation operations might increase as AMISOM continued its scheduled drawdown. As a result of the significant continuing risks to the safety of U.S. civil aviation in the territory and airspace of Somalia at altitudes below FL260, the FAA extended the expiration date of SFAR No. 107, § 91.1613, from January 7, 2020 until January 7, 2023.

IV. Discussion of the Final Rule

While developing this final rule, the FAA became aware that certain approaches and departures into and out of Djibouti Ambouli International Airport (HDAM) in the Addis Ababa FIR (HAAA) require flights using those approaches and departures to briefly transit overwater portions of Somalia's territorial airspace² at altitudes below FL260. The FAA assessed the flightpaths used to conduct these operations and determined the brief presence of U.S. civil aviation overwater in the territory and airspace of Somalia at altitudes below FL260 necessary to use these approaches and departures would present a low risk. The risks to U.S. civil aviation operations in the territory and airspace of Somalia at altitudes below FL260 from extremist and militant activity are concentrated primarily on and over the land territory of Somalia. Weapons systems to which extremist/militant groups active in Somalia likely have access have minimal ranges from the coastline. Therefore, the FAA is amending SFAR No. 107, § 91.1613, to permit

² As a general matter, a country's territorial waters extend 12 nautical miles from its coastal baselines determined in accordance with international law, and the airspace above a country's territorial waters forms part of that country's territorial airspace.

U.S. civil aviation operations to operate overwater in the territory and airspace of Somalia at altitudes below FL260 to the extent necessary to climb out of, or descend into, Djibouti Ambouli International Airport (HDAM) in the Addis Ababa FIR (HAAA). These operations are subject to the approval of the appropriate authorities of Djibouti and must be conducted in accordance with the conditions established by those authorities and consistent with air traffic control instructions. Operators climbing out of or descending into Djibouti Ambouli International Airport (HDAM) must remain overwater while operating in the territory and airspace of Somalia at altitudes below FL260 and must be either on a published instrument procedure or under the direction of air traffic control.

The FAA assesses the situation in the rest of the territory and airspace of Somalia at altitudes below FL260 as being increasingly hazardous for U.S. civil aviation. Since mid-2020, the number, lethality, and complexity of militant and/or extremist attacks has continued to increase, posing increased risk concerns for U.S. civil aviation operations in the territory and airspace of Somalia at altitudes below FL260. The Government of Somalia remains challenged in establishing security and governance in the country amidst economic constraints and faces increased threats from militant and/or extremist groups, particularly al-Shabaab.

Since the December 2019 final rule, AMISOM has reduced its forces in Somalia and continues the process of restructuring its presence into the African Union Transition Mission in Somalia (ATMIS). Al-Shabaab, the primary threat to U.S. civil aviation operations in the territory and airspace of Somalia at altitudes below FL260, has taken advantage of security transitions and drawdowns to expand its influence and attack operations. Al-Shabaab continues to demonstrate its intent and various capabilities to conduct attacks on targets often collocated with airports and against civil aviation. In 2022, al-Shabaab conducted multiple high-profile attacks demonstrating its increasing capacity and capability to conduct complex attacks throughout Somalia.

For example, during the first half of 2022, al-Shabaab frequently targeted international forces and Government of Somalia electoral venues located at Aden Adde International Airport (HCMM) using a variety of capabilities and tactics, including rocket fire, small-arms fire, and IEDs. These attacks often resulted in temporary flight disruptions at Aden Adde International Airport (HCMM). In May 2022, al-Shabaab successfully overran an African Union base at El Baraf, resulting in significant casualties and al-Shabaab's seizure of various weapons, including light anti-aircraft artillery weapon systems. In August 2022, al-Shabaab claimed responsibility for an attack on a hotel complex in Mogadishu frequented by Somali government officials.

Al-Shabaab and ISIS factions operating in Somalia likely have access to a variety of weapons, including man-portable air defense systems (MANPADS), heavy machine guns, rocket-propelled grenades (RPGs), and small-arms. Some MANPADS may be capable of reaching a maximum altitude of 25,000 feet above ground level (AGL), presenting a risk to U.S. civil aviation operations in the territory and airspace of Somalia at altitudes below FL260.

Additionally, al-Shabaab is working to further develop its capabilities, including a weaponized unmanned aircraft systems (UAS) capability. If this effort is successful, it would present further increased safety-of-flight risks to aircraft operating at lower altitudes in the vicinity of potentially targeted airports and airfields and to aircraft on the ground at these locations, both as a collision hazard and as a weapon system. Al-Shabaab has also expanded its weapons procurement efforts and indigenous production of weapons, increasing the quantity of weapons available for use in attacks.

In addition to extremist/militant activity, third-party forces—operating in Somalia without adequate coordination with Somali aviation authorities and a complete air picture present inadvertent risks to U.S. civil aviation operations in the territory and airspace of Somalia at altitudes below FL260. For example, international forces operating in Somalia engaged civil aircraft with small-arms fire on at least two occasions in 2020.

The FAA has determined, based on the enduring risks to U.S. civil aviation operations in the territory and airspace of Somalia at altitudes below FL260 described in this preamble, that four years is an appropriate duration for this SFAR. Therefore, as a result of the increasing unacceptable risk to the safety of U.S. civil aviation operations in the territory and airspace of Somalia at altitudes below FL260, the FAA extends the expiration date of SFAR No. 107, § 91.1613, from January 7, 2023, until January 7, 2027.

Further amendments to SFAR No. 107, § 91.1613, might be appropriate if the risk to U.S. civil aviation safety and security changes. In this regard, the FAA will continue to monitor the situation and evaluate the extent to which persons described in paragraph (a) of this rule might be able to operate safely in the territory and airspace of Somalia at altitudes below FL260.

The FAA also republishes the details concerning the approval and exemption processes in sections V and VI of this preamble, consistent with other recently published flight prohibition SFARs, to enable interested persons to refer to this final rule for comprehensive information about requesting relief from the FAA from the provisions of SFAR No. 107, § 91.1613.

V. Approval Process Based on a Request from a Department, Agency, or Instrumentality of the United States Government

A. Approval Process Based on an Authorization Request from a Department, Agency, or Instrumentality of the United States Government

In some instances, U.S. Government departments, agencies, or instrumentalities may need to engage U.S. civil aviation to support their activities in the territory and airspace of Somalia at altitudes below FL260. If a department, agency, or instrumentality of the U.S. Government determines that it has a critical need to engage any person described in paragraph (a) of SFAR No. 107, § 91.1613, including a U.S. air carrier or commercial operator, to transport civilian or military passengers or cargo or conduct other operations in the territory and airspace of Somalia at altitudes below FL260, that department, agency, or instrumentality may request the

FAA approve persons described in paragraph (a) of SFAR No. 107, § 91.1613, to conduct such operations.

The requesting U.S. Government department, agency, or instrumentality must submit the request for approval to the FAA's Associate Administrator for Aviation Safety in a letter signed by an appropriate senior official of the requesting department, agency, or instrumentality.³ The FAA will not accept or consider requests for approval from anyone other than the requesting U.S. Government department, agency, or instrumentality. In addition, the senior official signing the letter requesting FAA approval must be sufficiently positioned within the requesting department, agency, or instrumentality to demonstrate that the organization's senior leadership supports the request for approval and is committed to taking all necessary steps to minimize aviation safety and security risks to the proposed flights. The senior official must also be in a position to: (1) attest to the accuracy of all representations made to the FAA in the request for approval and (2) ensure that any support from the requesting U.S. Government department, agency, or instrumentality described in the request for approval is in fact brought to bear and is maintained over time. Unless justified by exigent circumstances, requesting U.S. Government departments, agencies, or instrumentalities must submit requests for approval to the FAA no less than 30 calendar days before the date on which the requesting department, agency, or instrumentality wishes the operator(s) to commence the proposed operation(s).

The requestor must send the request to the Associate Administrator for Aviation Safety, Federal Aviation Administration, 800 Independence Avenue SW, Washington, D.C. 20591. Electronic submissions are acceptable, and the requesting entity may request that the FAA notify it electronically as to whether the FAA grants the request for approval. If a requestor wishes to make an electronic submission to the FAA, the requestor should contact the Air Transportation

³ This approval procedure applies to U.S. Government departments, agencies, or instrumentalities; it does not apply to the public. The FAA describes this procedure in the interest of providing transparency with respect to the FAA's process for interacting with U.S. Government departments, agencies, or instrumentalities that seek to engage U.S. civil aviation to operate in the area in which this SFAR would prohibit their operations in the absence of specific FAA approval.

Division, Flight Standards Service, at (202) 267-8166, to obtain the appropriate email address. A single letter may request approval from the FAA for multiple persons described in SFAR No. 107, § 91.1613, or for multiple flight operations. To the extent known, the letter must identify the person(s) the requester expects the SFAR to cover on whose behalf the U.S.

Government department, agency, or instrumentality seeks FAA approval, and it must describe—

- The proposed operation(s), including the nature of the mission being supported;
- The service the person(s) covered by the SFAR will provide;
- To the extent known, the specific locations in the territory and airspace of Somalia at altitudes below FL260 where the proposed operation(s) will occur, including, but not limited to, the flight path and altitude of the aircraft while it is operating in the territory and airspace of Somalia at altitudes below FL260 and the airports, airfields, or landing zones at which the aircraft will take off and land; and
- The method by which the requesting department, agency, or instrumentality will provide, or how the operator will otherwise obtain, current threat information and an explanation of how the operator will integrate this information into all phases of the proposed operations (i.e., the pre-mission planning and briefing, in-flight, and post-flight phases).

The request for approval must also include a list of operators with whom the U.S.

Government department, agency, or instrumentality requesting FAA approval has a current contract(s), grant(s), or cooperative agreement(s) (or its prime contractor has a subcontract(s)) for specific flight operations in the territory and airspace of Somalia at altitudes below FL260.

The requestor may identify additional operators to the FAA at any time after the FAA issues its approval. Neither the operators listed in the original request, nor any operators the requestor subsequently seeks to add to the approval, may commence operations under the approval until the FAA issues them an Operations Specification (OpSpec) or Letter of Authorization (LOA), as appropriate, for operations in the territory and airspace of Somalia at altitudes below FL260. The

approval conditions discussed below apply to all operators. Requestors should send updated lists to the email address they obtain from the Air Transportation Division by calling (202) 267-8166.

If an approval request includes classified information or controlled unclassified information not authorized for public release, requestors may contact Aviation Safety Inspector Bill Petrak for instructions on submitting it to the FAA. His contact information appears in the **FOR FURTHER INFORMATION CONTACT** section of this final rule.

FAA approval of an operation under SFAR No. 107, § 91.1613, does not relieve persons subject to this SFAR of the responsibility to comply with all other applicable FAA rules and regulations. Operators of civil aircraft must comply with the conditions of their certificates, OpSpecs, and LOAs, as applicable. Operators must also comply with all rules and regulations of other U.S. Government departments, agencies, or instrumentalities that may apply to the proposed operation(s), including, but not limited to, regulations issued by the Transportation Security Administration.

B. Approval Conditions

If the FAA approves the request, the FAA's Aviation Safety organization will send an approval letter to the requesting U.S. Government department, agency, or instrumentality informing it that the FAA's approval is subject to all of the following conditions:

(1) The approval will stipulate those procedures and conditions that limit, to the greatest degree possible, the risk to the operator, while still allowing the operator to achieve its operational objectives.

(2) Before any approval takes effect, the operator must submit to the FAA:

(a) A written release of the U.S. Government from all damages, claims, and liabilities, including without limitation legal fees and expenses, relating to any event arising out of or related to the approved operations in the territory and airspace of Somalia at altitudes below FL260, unless climbing out of or descending into Djibouti Ambouli International Airport while

remaining overwater in the territory and airspace of Somalia at altitudes below FL260 and either on a published instrument procedure or under the direction of air traffic control; and

(b) The operator's written agreement to indemnify the U.S. Government with respect to any and all third-party damages, claims, and liabilities, including without limitation legal fees and expenses, relating to any event arising out of or related to the approved operations in the territory and airspace of Somalia at altitudes below FL260, unless climbing out of or descending into Djibouti Ambouli International Airport while remaining overwater in the territory and airspace of Somalia at altitudes below FL260 and either on a published instrument procedure or under the direction of air traffic control.

(3) Other conditions the FAA may specify, including those the FAA might impose in OpSpecs or LOAs, as applicable.

The release and agreement to indemnify do not preclude an operator from raising a claim under an applicable non-premium war risk insurance policy the FAA issues under 49 U.S.C. chapter 443.

If the FAA approves the proposed operation(s), the FAA will issue an OpSpec or LOA, as applicable, to the operator(s) identified in the original request and any operators the requestor subsequently adds to the approval, authorizing them to conduct the approved operation(s). In addition, as stated in paragraph (3) of this section V.B., the FAA notes that it may include additional conditions beyond those contained in the approval letter in any OpSpec or LOA associated with a particular operator operating under this approval, as necessary in the interests of aviation safety. U.S. Government departments, agencies, and instrumentalities requesting FAA approval on behalf of entities with which they have a contract or subcontract, grant, or cooperative agreement should request a copy of the relevant OpSpec or LOA directly from the entity with which they have any of the foregoing types of arrangements, if desired.

VI. Information Regarding Petitions for Exemption

Any operations not conducted under an approval the FAA issues through the approval process set forth previously may only occur in accordance with an exemption from SFAR No. 107, § 91.1613. A petition for exemption must comply with 14 CFR part 11. The FAA will consider whether exceptional circumstances exist beyond those described in the approval process in the previous section. To determine whether a petition for exemption from the prohibition this SFAR establishes fulfills the standard of 14 CFR 11.81, the FAA consistently finds necessary the following information:

- The proposed operation(s), including the nature of the operation;
- The service the person(s) covered by the SFAR will provide;
- The specific locations in the territory and airspace of Somalia at altitudes below FL260 where the proposed operation(s) will occur, including, but not limited to, the flight path and altitude of the aircraft while it is operating in the territory and airspace of Somalia at altitudes below FL260 and the airports, airfields, or landing zones at which the aircraft will take off and land;
- The method by which the operator will obtain current threat information and an explanation of how the operator will integrate this information into all phases of its proposed operations (i.e., the pre-mission planning and briefing, in-flight, and post-flight phases); and
- The plans and procedures the operator will use to minimize the risks identified in this preamble to the proposed operations, to support the relief sought and demonstrate that granting such relief would not adversely affect safety or would provide a level of safety at least equal to that provided by this SFAR. The FAA has found comprehensive, organized plans and procedures of this nature to be helpful in facilitating the agency's safety evaluation of petitions for exemption from flight prohibition SFARs.

The FAA includes, as a condition of each such exemption it issues, a release and agreement to indemnify, as described previously.

The FAA recognizes that, with the support of the U.S. Government, the governments of other countries could plan operations that may be affected by SFAR No. 107, § 91.1613. While the FAA will not permit these operations through the approval process, the FAA will consider exemption requests for such operations on an expedited basis and in accordance with the order of preference set forth in paragraph (c) of SFAR No. 107, § 91.1613.

If a petition for exemption includes information that is sensitive for security reasons or proprietary information, requestors may contact Aviation Safety Inspector Bill Petrak for instructions on submitting it to the FAA. His contact information is listed in the **FOR FURTHER INFORMATION CONTACT** section of this final rule.

VII. Regulatory Notices and Analyses

Federal agencies consider impacts of regulatory actions under a variety of Executive orders and other requirements. First, Executive Orders 12866 and 13563 direct that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96-354), as codified in 5 U.S.C. 603 et seq., requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act of 1979 (Pub. L. 96-39), as codified in 19 U.S.C. chapter 13, prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, the Trade Agreements Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4), as codified in 2 U.S.C. chapter 25, requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal

governments, in the aggregate, or by the private sector, of \$100 million or more annually (adjusted for inflation with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this final rule.

In conducting these analyses, the FAA has determined this final rule has benefits that justify its costs. This rule is a significant regulatory action, as defined in section 3(f) of Executive Order 12866, as it raises novel policy issues contemplated under that Executive order. As 5 U.S.C. 553 does not require notice and comment for this final rule, 5 U.S.C. 603 and 604 do not require regulatory flexibility analyses regarding impacts on small entities. This rule will not create unnecessary obstacles to the foreign commerce of the United States. This rule will not impose an unfunded mandate on State, local, or tribal governments, or on the private sector, by exceeding the threshold identified previously.

A. Regulatory Evaluation

This rule prohibits U.S. civil flights in the territory and airspace of Somalia at altitudes below FL260 due to the significant, increasing risks to the safety of U.S. civil aviation described in this preamble. The alternative flight routes result in some additional fuel and operations costs to the operators, as well as some costs attributed to passenger time. Accordingly, the incremental costs of the extension of this SFAR are minimal. By continuing to prohibit unsafe flights, the benefits of this rule will exceed the minimal flight deviation costs. Therefore, the FAA finds that the incremental costs of extending SFAR No. 107, § 91.1613, will be minimal and are exceeded by the benefits of avoided risk of deaths, injuries, and property damage that could occur if a U.S. operator's aircraft were shot down (or otherwise damaged) while operating in the territory and airspace of Somalia at altitudes below FL260.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), in 5 U.S.C. 603, requires an agency to prepare an initial regulatory flexibility analysis describing impacts on small entities whenever 5 U.S.C. 553

or any other law requires an agency to publish a general notice of proposed rulemaking for any proposed rule. Similarly, 5 U.S.C. 604 requires an agency to prepare a final regulatory flexibility analysis when an agency issues a final rule under 5 U.S.C. 553 after that section or any other law requires publication of a general notice of proposed rulemaking. The FAA concludes good cause exists to forgo notice and comment and to not delay the effective date for this rule. As 5 U.S.C. 553 does not require notice and comment in this situation, 5 U.S.C. 603 and 604 similarly do not require regulatory flexibility analyses.

C. International Trade Impact Assessment

The Trade Agreements Act of 1979 (Public Law 96-39) prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to this Act, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a legitimate domestic objective, such as the protection of safety, and does not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards.

The FAA has assessed the potential effect of this final rule and determined that its purpose is to protect the safety of U.S. civil aviation from risks to their operations in the territory and airspace of Somalia at altitudes below FL260, a location outside the U.S. Therefore, the rule complies with the Trade Agreements Act of 1979.

D. Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Public Law 104-4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of \$100 million or more (in 1995 dollars) in any one year by State, local, and tribal governments, in the aggregate, or by the

private sector; such a mandate is deemed to be a “significant regulatory action.” The FAA currently uses an inflation-adjusted value of \$155 million in lieu of \$100 million.

This final rule does not contain such a mandate. Therefore, the requirements of Title II of the Act do not apply.

E. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires the FAA to consider the impact of paperwork and other information collection burdens it imposes on the public. The FAA has determined no new requirement for information collection is associated with this final rule.

F. International Compatibility and Cooperation

In keeping with U.S. obligations under the Convention on International Civil Aviation, the FAA’s policy is to conform to International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has determined no ICAO Standards and Recommended Practices correspond to this regulation. The FAA finds this action is fully consistent with the obligations under 49 U.S.C. 40105(b)(1)(A) to ensure the FAA exercises its duties consistently with the obligations of the United States under international agreements.

While the FAA’s flight prohibition does not apply to foreign air carriers, DOT codeshare authorizations prohibit foreign air carriers from carrying a U.S. codeshare partner’s code on a flight segment that operates in airspace for which the FAA has issued a flight prohibition for U.S. civil aviation. In addition, foreign air carriers and other foreign operators may choose to avoid, or be advised or directed by their civil aviation authorities to avoid, airspace for which the FAA has issued a flight prohibition for U.S. civil aviation.

G. Environmental Analysis

The FAA has analyzed this action under Executive Order 12114, Environmental Effects Abroad of Major Federal Actions, and DOT Order 5610.1C, Paragraph 16. Executive Order 12114 requires the FAA to be informed of environmental considerations and take those considerations into account when making decisions on major Federal actions that could have environmental impacts anywhere beyond the borders of the United States. The FAA has determined this action is exempt pursuant to section 2-5(a)(i) of Executive Order 12114 because it does not have the potential for a significant effect on the environment outside the United States.

The FAA has determined that this action will not have a significant environmental effect abroad. In accordance with FAA Order 1050.1F, Environmental Impacts: Policies and Procedures, paragraph 8-6(c), the FAA has prepared a memorandum for the record stating the reason(s) for this determination and has placed it in the docket for this rulemaking.

VIII. Executive Order Determinations

A. Executive Order 13132, Federalism

The FAA has analyzed this rule under the principles and criteria of Executive Order 13132. The agency has determined this action will not have a substantial direct effect on the States, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, this rule will not have federalism implications.

B. Executive Order 13211, Regulations that Significantly Affect Energy Supply, Distribution, or Use

The FAA analyzed this rule under Executive Order 13211. The agency has determined it is not a “significant energy action” under the Executive order and will not be likely to have a significant adverse effect on the supply, distribution, or use of energy.

C. Executive Order 13609, Promoting International Regulatory Cooperation

Executive Order 13609 promotes international regulatory cooperation to meet shared challenges involving health, safety, labor, security, environmental, and other issues and to reduce, eliminate, or prevent unnecessary differences in regulatory requirements. The FAA has analyzed this action under the policies and agency responsibilities of Executive Order 13609 and has determined that this action will have no effect on international regulatory cooperation.

IX. Additional Information

A. Electronic Access

Except for classified and controlled unclassified material not authorized for public release, all documents the FAA considered in developing this rule, including economic analyses and technical reports, may be accessed from the Internet through the docket for this rulemaking.

Those documents may be viewed online at <https://www.regulations.gov> using the docket number listed above. A copy of this rule will be placed in the docket. Electronic retrieval help and guidelines are available on the website. It is available 24 hours each day, 365 days each year. An electronic copy of this document may also be downloaded from the Office of the Federal Register’s website at <https://www.federalregister.gov> and the Government Publishing Office’s website at <https://www.govinfo.gov>. A copy may also be found at the FAA’s Regulations and Policies website at https://www.faa.gov/regulations_policies.

Copies may also be obtained by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM-1, 800 Independence Avenue SW, Washington, DC 20591, or by calling (202) 267-9677. Commenters must identify the docket or notice number of this rulemaking.

B. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) (Pub. L. 104-121) (set forth as a note to 5 U.S.C. 601) requires the FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. A small entity with questions regarding this document may contact its local FAA official, or the persons listed under the **FOR FURTHER INFORMATION CONTACT** section at the beginning of the preamble. To find out more about SBREFA on the Internet, visit https://www.faa.gov/regulations_policies/rulemaking/sbre_act/.

List of Subjects in 14 CFR Part 91

Air traffic control, Aircraft, Airmen, Airports, Aviation safety, Freight, Somalia.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends chapter I of title 14, Code of Federal Regulations, as follows:

PART 91—GENERAL OPERATING AND FLIGHT RULES

1. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40101, 40103, 40105, 40113, 40120, 44101, 44111, 44701, 44704, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46504, 46506–46507, 47122, 47508, 47528–47531, 47534, Pub. L. 114-190, 130 Stat. 615 (49 U.S.C. 44703 note); articles 12 and 29 of the Convention on International Civil Aviation (61 Stat. 1180), (126 Stat. 11).

2. Amend § 91.1613 by revising paragraphs (c) and (e) to read as follows:

§ 91.1613 Special Federal Aviation Regulation No. 107—Prohibition Against Certain Flights in the Territory and Airspace of Somalia.

* * * * *

(c) *Permitted operations.* This section does not prohibit persons described in paragraph (a) of this section from conducting flight operations in the territory and airspace of Somalia under the following circumstances:

(1) Overflights of Somalia may be conducted at altitudes at or above FL260 subject to the approval of, and in accordance with the conditions established by, the appropriate authorities of Somalia.

(2) Aircraft departing from Djibouti Ambouli International Airport (International Civil Aviation Organization (ICAO) code: HDAM) may operate overwater in the territory and airspace of Somalia at altitudes below FL260 only to the extent necessary to permit a climb during takeoff if the operator of that aircraft:

- (i) Receives any necessary approval from the appropriate authorities of Djibouti;
- (ii) Conducts operations that comply with applicable conditions established by the appropriate authorities of Djibouti and air traffic control instructions; and
- (iii) Is either on a published instrument procedure or under the direction of air traffic control.

(3) Aircraft descending into Djibouti Ambouli International Airport (HDAM) may operate overwater at altitudes below FL260 in the territory and airspace of Somalia only to the extent necessary to permit descent for landing at Djibouti Ambouli International Airport (HDAM), if the operator of that aircraft:

- (i) Receives any necessary approval from the appropriate authorities of Djibouti;
- (ii) Conducts operations that comply with applicable conditions established by the appropriate authorities of Djibouti and air traffic control instructions; and
- (iii) Is either on a published instrument procedure or under the direction of air traffic control.

(4) Flight operations may be conducted in the territory and airspace of Somalia at altitudes below FL260 if such flight operations are conducted under a contract, grant, or

cooperative agreement with a department, agency, or instrumentality of the U.S. Government (or under a subcontract between the prime contractor of the U.S. Government department, agency, or instrumentality and the person described in paragraph (a) of this section) with the approval of the FAA or under an exemption issued by the FAA. The FAA will consider requests for approval or exemption in a timely manner, with the order of preference being: First, for those operations in support of U.S. Government-sponsored activities; second, for those operations in support of government-sponsored activities of a foreign country with the support of a U.S. Government department, agency, or instrumentality; and third, for all other operations.

* * * * *

(e) *Expiration.* This SFAR will remain in effect until January 7, 2027. The FAA may amend, rescind, or extend this SFAR, as necessary.

Issued in Washington, D.C., under the authority of 49 U.S.C. 106(f) and (g), 40101(d)(1), 40105(b)(1)(A), and 44701(a)(5).

Billy Nolen,

Acting Administrator.

[FR Doc. 2022-28134 Filed: 12/23/2022 8:45 am; Publication Date: 12/27/2022]